

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ERNEST CALVINO JR.,

Plaintiff,

-against-

DONALD TRUMP; IVANKA TRUMP;  
MELANIE TRUMP<sup>1</sup>; ILKA TRUMP,

Defendants.

20-CV-0348 (CM)

ORDER OF DISMISSAL

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff brings this action *pro se*. By order dated January 21, 2020, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* ("IFP"). The Court dismisses this action for the reasons set forth below.

**STANDARD OF REVIEW**

The Court must dismiss an IFP complaint, or portion thereof, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint, or portion thereof, when the Court lacks subject-matter jurisdiction. *See Fed. R. Civ. P. 12(h)(3)*. While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they suggest," *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474-75 (2d Cir. 2006) (internal quotation marks and citations omitted, emphasis in original).

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<sup>1</sup> Plaintiff is apparently seeking to sue Melania Trump.

A claim is frivolous when it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989), *abrogated on other grounds by Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007); *see also Denton v. Hernandez*, 504 U.S. 25, 33 (1992) (holding that “a finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible”); *Livingston*, 141 F.3d at 437 (“[A]n action is ‘frivolous’ when either: (1) the factual contentions are clearly baseless . . . ; or (2) the claim is based on an indisputably meritless legal theory.”) (internal quotation marks and citation omitted).

## **BACKGROUND**

Plaintiff, using the Court’s general complaint form, brings this action invoking the Court’s diversity jurisdiction. He sues President Donald Trump; Ivanka Trump, the President’s daughter; and Melania Trump, the President’s wife. Plaintiff claims that the federal constitutional or statutory basis for this action is “neglect to answer my question dough, Lack of support, Lack to transfer my asset, property, Businesses, money.” (ECF No. 2, 2.) Plaintiff asserts the following facts, verbatim:

They had claim they had help me, I had heard that they was trying to adoct me to help me, support me and get me out of the shelter in 321 East Tremont Ave. Bronx NY 1045.

This happened during the summer 2018. I am still in the shelter and I have not seen there support or Them trying to get me out of the shelter.

(*Id.* at 5 ¶ III.) Plaintiff seeks the return of property and monetary damages.

On January 17, 2020, Plaintiff submitted to the Court a purported amended complaint. (ECF No. 4.) But rather than submitting it to replace the initial pleading, it appears that Plaintiff filed the amended complaint to add a new defendant – Ilka Trump – and to request consolidation of this action with his case against the President’s oldest son, *Calvino v. Trump*, ECF 1:20-CV-0068, 2. As Plaintiff makes it clear that the second pleading was intended to supplement his

original pleading, the Court will treat the two complaints (ECF Nos. 2, 4) together as the operative complaint for this action. The Court declines to consolidate this action with *Calvino*, ECF 1:20-CV-0068.

### **DISCUSSION**

Since December 17, 2019, Plaintiff has filed numerous frivolous actions in this Court. He continued to file frivolous complaints even after the Court warned him that further vexatious or frivolous litigation in this Court will result in an order barring him from filing new actions IFP unless he receives prior permission. *See, e.g., Calvino v. Jones*, ECF 1:19-CV-11601, 3 (S.D.N.Y. Dec. 23, 2019). On January 10, 2020, the Court directed Plaintiff to show cause why he should not be barred from filing any further actions in this Court IFP without first obtaining permission from the Court to file his complaint. *See Calvino v. Fauto L.*, ECF 1:19-CV-11958, 4 (S.D.N.Y. Jan. 10, 2020).

Plaintiff filed this action after the Court directed him to show cause why he should not be barred. Even when read with the “special solicitude” due *pro se* pleadings, *Triestman*, 470 F.3d at 475, Plaintiff’s claims rise to the level of the irrational, and there is no legal theory on which he can rely. *See Denton*, 504 U.S. at 33; *Livingston*, 141 F.3d at 437. This action is a continuation of Plaintiff’s pattern of frivolous and vexatious litigation.

District courts generally grant a *pro se* plaintiff an opportunity to amend a complaint to cure its defects, but leave to amend is not required where it would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123-24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Because the defects in Plaintiff’s pleadings cannot be cured with an amendment, the Court declines to grant Plaintiff leave to amend and dismisses this action as frivolous. *See* 28 U.S.C. § 1915(e)(2)(B)(i).

## CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket. The Court consolidates Plaintiff's two complaints (ECF Nos. 2, 4) and treats them together as the operative complaint. The Court dismisses this action as frivolous under 28 U.S.C. § 1915(e)(2)(B)(i).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: January 22, 2020  
New York, New York

A handwritten signature in black ink, appearing to read "Colleen McMahon", is written over a horizontal line.

COLLEEN McMAHON  
Chief United States District Judge